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No. 417

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

v.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

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The Solicitor General on behalf of the United States prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of South Dakota entered in the above-entitled case on May 20, 1946.

OPINION BELOW

The opinion of the Supreme Court of the State of South Dakota (R. 21–30) is reported at 23 N. W. 2d 281. The Circuit Court of the Fifth Judicial Circuit of South Dakota and the County Court of Roberts County, South Dakota, wrote no opinions.

JURISDICTION

The judgment of the Supreme Court of South Dakota was entered on May 20, 1946 (R. 30–31). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 15, 1925, on the ground that the decision denied a title, right, privilege, or immunity claimed by the United States under Section 3466 of the Revised Statutes. The cases relied upon to sustain the jurisdiction of this Court are *United States* v. *Knott,* 298 U. S. 544; *United States* v. *Emory,* 314 U. S. 423; and *United States* v. *Waddill Co.,* 323 U. S. 353.

The court below held that, in a probate proceeding in the County Court of Roberts County, South Dakota, priority of payment under R. S. 3466 was properly denied to a claim asserted by the Farm Credit Administration, on behalf of the United States, based upon Emergency Crop and Feed Loans made to the decedent pursuant to the Acts of February 23, 1934, and June 19, 1934.

The United States asserted its right under R. S. 3466 to priority in payment at the time it filed its claim with the respondent Administrator. Upon denial of the claimed preference by respondent, the claim for priority was successively urged upon and rejected by the County Court of Roberts County (R. 13), by the Circuit Court

for the Fifth Judicial Circuit (R. 19), and by the Supreme Court of the State of South Dakota (R. 21–30).

The question presented is one of substance (*United States* v. *Emory,* 314 U. S. 423; *United States* v. *Waddill Co.,* 323 U. S. 353), as is more fully developed under the reasons for granting the writ (*infra,* pp. 6–13).

QUESTION PRESENTED

Whether, in a state probate proceeding, a claim asserted by the Farm Credit Administration and certain of its officials for and on behalf of the United States is entitled to priority under Section 3466 of the Revised Statutes.

STATUTES INVOLVED

The relevant portions of the statutes involved are set forth in the Appendix, *infra,* pp. 14–18.

STATEMENT

The facts are undisputed, and may be summarized as follows: Pursuant to the Acts of February 23, 1934, and June 19, 1934 (Appendix, *infra,* pp. 14–17), the Governor of the Farm Credit Administration extended loans to Wilhelm Buttke totaling $370.00 (R. 5–8). Eighty dollars of this amount was evidenced by a 5½% interest-bearing note, payable on or before August 13, 1935, and bearing on its face the printed notations: "This instrument given to the Governor, Farm Credit Administration acting pursuant to the act

of Congress approved February 23, 1934" and "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration, which loan is secured by a lien instrument covering personal property" (R. 5). The remaining $290.00 loaned to Buttke was evidenced by six 5½% interest-bearing notes, payable on or before November 1, 1935, each note bearing on its face the printed notations: "This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934," and "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration" (R. 5–8). On December 26, 1941, Wilhelm Buttke died intestate, leaving an estate insufficient to pay all of his debts (R. 9). On March 2, 1942, there was filed in the County Court of Roberts County, South Dakota, a claim against Buttke's estate for $523.80, by "John T. Ashford, Manager, Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska, an authorized agent for the Governor, Farm Credit Administration, for and on behalf of the United States of America" (R. 3–4). Accompanying the claim was a mimeographed "memorandum" from the Farm Credit Administration, Emergency Crop and Feed Loan Office, Omaha, Nebraska, asserting priority on behalf of the United States

under R. S. 3466 (R. 1–2).[1] On October 31, 1942, the County Court, in its "Order approving final report, final decree and discharge of administrator," denied preference to the claim, but allowed it in the sum of $79.53 as the pro rata share of a claim of a common creditor (R. 12–16). On appeal, under the caption "U. S. Department of Agriculture, Emergency Crop and Feed Loans," the decision of the County Court was affirmed by the Circuit Court of the Fifth Judicial Circuit of South Dakota, and by the Supreme Court of South Dakota (R. 18–19, 21–30).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of South Dakota erred:

1. In holding in substance that a claim filed in the name of the Farm Credit Administration or its officers "for and on behalf of the United States" is not a claim filed by the United States.

2. In holding that the Farm Credit Administration is an entity separate and distinct from the United States, having independent power to sue.

3. In holding that claims of the Farm Credit Administration based upon loans made under the Acts of February 23, 1934, and June 19, 1934, are

[1] The memorandum was addressed to "All Receivers, Referees, Executors, Administrators, Assignees, and Courts Dealing with Insolvent, Bankrupt, or Deceased Borrowers of the Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska."

not "debts due to the United States" within the meaning of R. S. 3466.

4. In holding that claims of Farm Credit Administration based upon loans under the Acts of February 23, 1934 and June 19, 1934 are not entitled to priority under R. S. 3466.

5. In denying priority to claims of the United States.

6. In affirming the judgment of the Circuit Court of the Fifth Judicial Circuit of South Dakota.

REASONS FOR GRANTING THE WRIT

R. S. 3466 provides that "whenever the estate of any deceased debtor * * * is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied * * *" (Appendix, *infra*, p. 14). The court below, intimating that the claim here involved was not a "debt due to the United States," because asserted in the name of the Farm Credit Administration, denied preference to the claim upon the independent ground that the statutes under which the claim originated had carved out exceptions to R. S. 3466.[2] This ruling upon an important question of federal law is, we submit, clearly erroneous and in conflict with the applicable decisions of this Court as to the scope of R. S. 3466.

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[2] While the court only discussed the Act of February 23, 1934, its decision applies to the Act of June 19, 1934, as well.

1. The claim here involved was plainly for "a debt due to the United States." *United States* v. *Thomas*, 107 F. 2d 765 (C. C. A. 5); *Person* v. *United States*, 112 F. 2d 1 (C. C. A. 8), certiorari denied, 311 U. S. 672; *In re Wilson*, 23 F. Supp. 236 (N. D. Tex.); *United States* v. *Fontenot*, 33 F. Supp. 629 (W. D. La); *Federal Reserve Bank of Dallas* v. *Smylie*, 134 S. W. 2d 838 (Tex. Civ. App.); cf. *Wagner* v. *McDonald*, 96 F. 2d 273 (C. C. A. 8); *In re Hansen Bakeries, Inc.*, 103 F. 2d 665 (C. C. A. 3); *United States* v. *Dobbins*, 139 F. 2d 169 (C. C. A. 5). And, although filed by the Farm Credit Administration, the claim was a claim asserted by the United States.[3] The claim itself specifically stated that it was a "claim of the United States of America," and that the Farm Credit Administration was acting "for and on behalf of the United States"; the notes appended to the claim all recited their origin in loans made under federal statutes; and the "memorandum" attached to the claim asserted preference under Rev. Stat. 3466 for "debts due to the United States." In these circumstances, the claim was clearly a claim of, and made by, the United States.[4] *Wagner* v. *McDonald*, 96 F. 2d 273 (C.

[3] While the court below did not expressly deny that the claim was a claim asserted by the United States, the opinion states that the claim could be treated as such "only by inference, explanation and argument" (R. 23).

[4] The circumstances that the appeal in the circuit court was captioned "United States Department of Agriculture, Emergency Crop and Feed Loans," instead of "United States," is

C. A. 8); *In re Dickson's Estate*, 197 Wash. 145; *Korman* v. *Federal Housing Administrator*, 113 F. 2d 743 (App. D. C.) (*semble*); cf. *E. I. duPont de Nemours & Co.* v. *Davis*, 264 U. S. 456, 459; *Inland Waterways* v. *Young*, 309 U. S. 517; *Cherry Cotton Mills* v. *United States*, No. 187, Oct. T. 1945, decided March 25, 1946.

immaterial here. The case was handled by the United States Attorney's Office at all times, and was conducted in the same manner as any other suit of the United States. Cf. *National Home for Disabled Volunteer Soldiers* v. *Wood*, 81 F. 2d 963, 965 (C. C. A. 7), affirmed, 299 U. S. 211. The variation in caption could in no way prejudice respondent. Cf. *E. I. duPont de Nemours & Co.* v. *Davis*, 264 U. S. 456, 459. In any event, any question of the right of the United States to sue in the name of the "Department of Agriculture" is no longer open to challenge, for it is well settled that after issue is joined it is too late to raise such a question. *Fortier* v. *New Orleans Nat. Bank*, 112 U. S. 439; *McCandless* v. *Furlaud*, 293 U. S. 67, 73; *National Home for Disabled Volunteer Soldiers* v. *Wood*, *supra*; *W. H. Shenners Co.* v. *Lake Worth Realty & Building Co.*, 45 F. 2d 297 (C. C. A. 7), certiorari denied, 283 U. S. 833; *Alderman* v. *New York Underwriters Insurance Co.*, 61 S. D. 284, 299; *State ex rel. Cook* v. *Board of Commissioners*, 29 S. D. 358.

[5] In *Federal Housing Administrator* v. *Moore*, 90 F. 2d 32 (C. C. A. 9), mentioned by the court below (R. 29), priority in bankruptcy was denied a claim of the Federal Housing Administrator, partly on the ground that the claim was not filed in the name of the United States. But, it does not appear that the claim there was filed, as here, on behalf of the United States, or that the debt upon which the claim was based was acquired by the Administrator acting for the United States. Moreover, the decision of the court turned primarily upon the fact that the debt was assigned to the Administrator after the date of adjudication. See *Wagner* v. *McDonald*, *supra*, 96 F. 2d at 276; *In re Dickson's Estate*, 197 Wash. at 153; *United States* v. *Marxen*, 307 U. S. 200.

2. In denying priority to this claim, the court below disobeyed "the plain command of § 3466 that 'debts due to the United States shall be first satisfied' " (*United States* v. *Emory*, 314 U. S. 423, 426). Notwithstanding the repeated admonition of this Court that "only the plainest inconsistency would warrant * * * finding an implied exception to the operation of so clear a command" (*United States* v. *Emory, supra*, at 433; *Illinois ex rel. Gordon* v. *United States*, No. 749, 1945 Term, decided April 22, 1946), the court below, without reliance upon any particular language in the Act of February 23, 1934, and without referring to any of its legislative history, held that the Act gave rise to an implied exception to R. S. 3466. The court relied, in part, upon *Sloan Shipyards Corp.* v. *Fleet Corporation*, 258 U. S. 549, which denied priority to a claim of the Fleet Corporation (R. 25–26). But the *Sloan* case clearly has no application here, for it is only pertinent to claims asserted by a corporate agency of the United States (see *Korman* v. *Federal Housing Administrator*, 113 F. 2d 743, 746 (App. D. C.)); the Farm Credit Administration, here involved, "is merely an administrative unit of government" (*United States* v. *Fontenot*, 33 F. Supp. 629 (W. D. La.); *Korman* v. *Federal Housing Administrator, supra*, 113 F. 2d at 746), without corporate personality, and without authority to sue as an independent entity (*North Dakota-Montana Wheat Growers Ass'n* v. *United States*, 66

F. 2d 573 (C. C. A. 8); *Federal Reserve Bank of Dallas* v. *Smylie*, 134 S. W. 2d 838 (Tex. Civ. App.)).[6]

The court below also relied upon *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, which denied priority to a claim based upon a loan to a railroad under Title II of the Transporation Act, 1920 (41 Stat. 456, 457–469, 49 U. S. C. 71 *et seq.*) (R. 27). That Act, designed to promote the stability of the railroads for the national benefit, provided that the Government should, to a certain extent, finance the carriers until their credit was restored; and this Court, believing that priority under R. S. 3466 for such loans would impair rather than improve the credit of the railroads, held that to apply R. S. 3466 would have "defeated the purpose of Congress" (280 U. S. at 484–485). The court below sought to assimilate the instant case to the *Guaranty Trust* case, suggesting that "knowledge of priority of Government claims certainly would have been a handicap to a farmer in using his credit with local bankers and investors" (R. 28).

[6] The court below also intimated that the lending activities of the United States are commercial rather than governmental in character (R. 23–25). But all valid acts of the United States are necessarily governmental and sovereign in character. *Graves* v. *O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32. A contrary holding in respect of a Federal Housing Administration loan by the Supreme Court of Florida was summarily rejected by this Court in *United States* v. *Summerlin*, 310 U. S. 414, 416, reversing s. c. 140 Fla. 475.

However, this misconceives the underlying purpose of the statutes under which the loans here involved were made. They were granted to the farmer so that he might plant a new crop or preserve his starving livestock; the amount of the loan was impressed with a trust to accomplish that purpose; and the loans were made only when he could not borrow elsewhere (Appendix, *infra*, p. 16; see *United States* v. *Thomas*, 107 F. 2d 765, 766 (C. C. A. 5)). Thus, the loans were hardly intended as a device for maintaining credit, and the court below, in concluding that the *Guaranty Trust* decision was "controlling in this case," was clearly in error (R. 28).

The *Guaranty Trust* case, we believe, represents simply an isolated exception carved out of R. S. 3466 because of the unique character of the lending statute there involved. Certainly since the time of that case, the decisions in *United States* v. *Knott*, 298 U. S. 544; *United States* v. *Emory*, 314 U. S. 423; *United States* v. *Waddill Co.*, 323 U. S. 353; and *Illinois ex rel. Gordon* v. *United States*, *supra*, decided April 22, 1946, which dealt with other situations, have charted a wholly different course. Thus, in the *Knott* case the United States was given priority for debts due on estreated bail bonds; in the *Emory* case, priority was granted to a Federal Housing Administration claim based upon a loan insured under the Federal Housing Act; in the *Waddill*

case, a claim of the United States was given priority over a landlord's lien and a municipal tax lien; and in the *Gordon* case, a claim of the United States for unemployment compensation taxes was accorded priority over the state's claim for unemployment compensation taxes. We believe that these later decisions, and particularly the *Emory* case, disclose that R. S. 3466 is to be applied in its full vigor, and that, before an exception thereto will be implied, the language or the legislative history of a given Act must affirmatively and plainly show that the priority of the United States was to be waived. Since no such affirmative showing can be made here, the decision of the court below was clearly erroneous.

3. The question presented in this case is one of substantial importance meriting review by this Court. If the decision below is allowed to stand, it will undoubtedly encourage other state courts to take a hostile view towards R. S. 3466, and to disregard its "plain command," both with respect to claims arising under Farm Credit Administration statutes and claims arising under other federal statutes. See *United States* v. *Knott, supra; United States* v. *Emory, supra; United States* v. *Texas,* 314 U. S. 480; *United States* v. *Waddill Co., supra.* The Secretary of Agriculture advises that claims of the character here involved, based upon "loans made by the Farm Credit Administration" and "similar claims for loans made by

the Farm Security Administration, arise constantly and in the course of time there will be hundreds of such claims aggregating a large amount of money." The United States Attorney for the District of South Dakota advises that, as a consequence of the decision below, the courts of South Dakota are refusing to recognize claims based upon loans of the Farm Credit Administration as debts due the United States, and are applying state statutes of limitations to bar prosecution of such claims.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. HOWARD MCGRATH,
Solicitor General.

AUGUST 1946.

APPENDIX

1. R. S. 3466, 31 U. S. C. 191, provides as follows:

> *Priority established.*—Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

2. The Act of February 23, 1934, c. 23, 48 Stat. 354, provides as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Governor of the Farm Credit Administration, hereinafter in this Act referred to as the 'Governor', is hereby authorized to make loans to farmers during the year 1934 for crop production, planting, fallowing, and cultivation and, to the extent of not exceeding $1,000,000, for feed for livestock in drought- and storm-stricken areas.
>
> SEC. 2 (a) A first lien on all crops growing or to be planted or grown or harvested

during the year 1934, or on livestock, shall be required as security for any such loan: *Provided, however,* That in the case of a loan for the purpose of summer fallowing or the production of winter wheat, a first lien, or an agreement to give a first lien, on crops to be harvested in 1935 may, in the discretion of the Governor, be deemed sufficient security. Except as hereinafter provided, such loans shall be made through such agencies, upon such terms and conditions, and subject to such regulations as the Governor shall prescribe. Recording and other fees in connection with such loans shall not exceed $1 in any case, which shall be paid by the Farm Credit Administration. Loans made pursuant to the provisions of this Act shall bear interest at the rate of not to exceed 5½ per centum per annum. For the purpose of collecting loans made under this Act and under prior Acts of the same general character, the Governor may use the facilities and services of the Farm Credit Administration or of any officer or officers thereof and may pay for such services and the use of such facilities from the funds made available under section 5 hereof for the payment of necessary administrative expenses; and such institutions are hereby expressly empowered to enter into agreements with the Governor for such purposes.

(b) The amount which may be loaned to any borrower pursuant to this Act shall not exceed $250 unless, in the opinion of the Governor, the circumstances surrounding the loan are such as to warrant a larger amount, in which event the borrower shall be entitled to a loan not in excess of $400; *Provided, however,* That in

any area certified by the President of the United States to the Governor as a distressed emergency area, the Governor may make loans without regard to the foregoing limitations, under such regulations and for such time as he may prescribe therefor.

(c) No loan shall be made under this Act to any applicant who shall not have first established to the satisfaction of the proper officer or employee of the Farm Credit Administration, under such regulations as the Governor may prescribe (1) that such applicant is unable to procure from other sources a loan in an amount reasonably adequate to meet his needs for the purposes for which loans may be made under this Act; and (2) that such applicant is cooperating directly in the crop production control program of the Agricultural Adjustment Administration or is not proposing to increase his 1934 production of basic agricultural commodities in a manner detrimental to the success of such program.

Sec. 3 (a) The moneys authorized to be loaned by the Governor under this Act are declared to be impressed with a trust to accomplish the purposes provided for by this Act, namely, the production, planting, fallowing, cultivation of crops, and feed for farm livestock, which trust shall continue until the moneys loaned pursuant to this Act have been used for the purposes contemplated by this Act, and it shall be unlawful for any person to make any material false representation for the purpose of obtaining any loan or to assist in obtaining such loan or to dispose of or assist in disposing of any crops given as security for any loan made under authority of this Act,

except for the account of the Governor, and for the purpose of carrying out the provisions of this Act.

* * * * *

3. The Act of June 19, 1934, c. 648, 48 Stat. 1021, 1056, provides as follows:

* * * * *

To meet the emergency and necessity for relief in stricken agricultural areas, to remain available until June 30, 1935, $525,000,000, to be allocated by the President to supplement the appropriations heretofore made for emergency purposes and in addition thereto for (1) making loans to farmers for, and/or (2) the purchase, sale, gift, or other disposition of, seed, feed, freight, summer fallowing and similar purposes; expenditures hereunder and the manner in which they shall be incurred, allowed, and paid, shall be determined by the President, and may include expenditures for personal services and rent in the District of Columbia and elsewhere and for printing and binding and may be made without regard to the provisions of section 3709 of the Revised Statutes.

* * * * *

4. Section 35.1422, South Dakota Code (1939) provides as follows:

Order of Payment of Claims. All demands against the estate of any deceased person must be paid in the following order:

(1) The expenses of administration;

(2) Funeral expenses, including reasonable cost of burial lot, and not to exceed fifty dollars for marker on grave;

(3) The expenses of last sickness;

(4) Any debt that may be due by decedent personally to servants and employees for services rendered within the sixty days next preceding his death;

(5) Debts having preference by the laws of the United States;

(6) All other demands against the estate, except that where a lien for any demand exists by mortgage, pledge, attachments, judgments, or execution levy, such lien shall have preference according to its priority to the extent of such demand, on any specific property on which such lien shall have attached."

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